



U.S. Department of Justice

United States Attorney  
Southern District of New York

86 Chambers Street  
New York, New York 10007

May 15, 2015

**BY ECF**

Honorable Jesse M. Furman  
United States District Judge  
40 Foley Square  
New York, New York 10007

Re: United States v. Wells Fargo Bank, N.A., 12 Civ. 7527 (JMF)

Dear Judge Furman:

We write respectfully on behalf of the parties in advance of the pretrial conference scheduled for this Monday, May 18, 2015, at 3:15 p.m., to provide the information identified in the November 14, 2013 Civil Case Management Plan and Scheduling Order (Dkt. 63).

**A. Statement of Existing Deadlines, Due Dates and/or Cut-Off Dates**

Fact discovery in this matter is ending today, May 15, 2015, with the caveat that this letter notes certain outstanding discovery-related issues below. All counsel are required to meet in person for at least one hour to discuss settlement within fourteen (14) days following the close of fact discovery.

The deadline for completion of expert discovery is currently August 21, 2015 (Dkt. 131). However, the parties expect to make an application to the Court with respect to the expert discovery schedule. Following the completion of expert discovery, the parties have until September 21, 2015, to file any post-discovery motions (including summary judgment motions).

**B. Brief Description of Any Outstanding Motions**

The only currently pending motion is the letter motion of Defendant Wells Fargo Bank, N.A. ("Wells Fargo") for partial reconsideration of the Court's May 13, 2015 Order. *See* Dkt. 189.

**C. Brief Description of the Status of Discovery and Any Discovery that Remains to Be Completed**

While fact discovery is substantially complete, there remain some outstanding items. First, issues may arise from the parties' responses to recently served discovery requests. The Government and Wells Fargo are both serving responses to document requests today, and the Government will be serving responses in late May to contention interrogatories and requests for admission served by both Defendants.

Second, the parties intend to make a joint application today to take the deposition of a fact witness, Brenda Boldridge, outside the discovery period. The reason for the request is Ms. Boldridge's very recent retention of independent counsel, which prevented her deposition from going forward during the fact discovery period.

Defendants also expect to raise with the Court outstanding concerns about witnesses and information presented by the Government with respect to Defendants' Rule 30(b)(6) Notices.

The parties may also elect to raise some issues relating to prior document productions.

Finally, the parties continue to attempt to resolve outstanding issues with respect to documents and information withheld by the parties on the basis of various privilege assertions, as discussed in Section G below.

**D. List of Prior Settlement Discussions**

Since the parties' last joint letter to the Court on November 14, 2014, Wells Fargo and the Government have participated in some additional, informal discussions.

**E. Anticipated Length of Trial and Whether the Case Will Be Tried to a Jury**

The parties currently estimate that trial will last six weeks. The case will be tried to a jury.

**F. Whether the Parties Anticipate Filing Motions for Summary Judgment**

Defendants currently anticipate filing motions for summary judgment.

**G. Others Issues that the Parties Would Like to Raise, or Information that May Assist the Court in Advancing the Case to Settlement or Trial**

There are additional outstanding issues with respect to the parties' privilege logs, with respect to which the parties will continue to meet and confer and seek the Court's assistance if necessary.

Defendants have some outstanding issues with respect to the Government's clawbacks of privileged documents, which Defendants contend relate to their statute of limitations defenses. The parties will meet and confer with respect to these issues in the first instance.

Finally, Defendant Lofrano has asserted an advice of counsel defense. *See* Answer, Dkt. No. 94, at 36. The parties will meet and confer with respect to certain discovery and privilege issues relating to the assertion of this defense.

Thank you for your consideration of this matter.

Respectfully submitted,

PREET BHARARA  
United States Attorney

By: /s/ Jeffrey S. Oestericher  
JEFFREY S. OESTERICH  
REBECCA S. TINIO  
CHRISTOPHER B. HARWOOD  
CALEB HAYES-DEATS  
DOMINIKA TARCZYNSKA  
Assistant United States Attorneys  
Tel: (212) 637-2698/2774/2726/2699  
Fax: (212) 637-2730

cc: Douglas W. Baruch, Esq.  
William F. Johnson, Esq.  
Jennifer Wollenberg, Esq.  
*Counsel for Wells Fargo Bank, N.A.*

Lewis J. Liman, Esq.  
Meredith Kotler, Esq.  
*Counsel for Kurt Lofrano*